

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE MARCH 24, 2010

SENATE BILL

No. 1071

Introduced by Senator DeSaulnier

February 17, 2010

An act to amend Section 11165 of, and ~~add Section 11165.05 to,~~ to *add and repeal Section 11165.05 of,* the Health and Safety Code, and *to add and repeal Section 17054.8 of,* and to *add and repeal Part 33 (commencing with Section 70001) of Division 2 of,* the Revenue and Taxation Code, relating to ~~controlled substances~~ *prescription drugs.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1071, as amended, DeSaulnier. ~~Controlled Substance Utilization Review and Evaluation System. Personal income tax: credit: prescription drugs: controlled substances tax: CURES.~~

The Personal Income Tax Law authorizes various credits against the tax imposed by that law.

This bill would, on and after January 1, 2011, and before January 1, 2016, authorize a credit against that tax for a person who is 55 years of age or older in an amount equal to the amount paid or incurred for that taxpayer's own medicines or drugs, as described, that is not reimbursable or payable by public or private health insurance plans or by any 3rd party.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges. Existing law also requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring

of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

This bill would, on and after January 1, 2011, and before January 1, 2016, impose a tax at the rate of \$0.0025 per pill included in Schedule II, III, or IV upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV, or other person that makes the first sale in this state of a Schedule II, III, or IV controlled substance. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the CURES Fund, which this bill would create. This bill would require moneys in the fund, upon appropriation by the Legislature, to be allocated to the Department of Justice for the cost of administration of the CURES program, as specified.

This bill would also require a person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV into this state, to register with the Department of Justice to enable the department to report specified information to the board for purposes of collecting a tax on those persons. Those provisions would remain in effect until January 1, 2016.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the electronic monitoring and reporting of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances pursuant to the Controlled Substance Utilization Review and Evaluation System (CURES) program.~~

~~This bill would require the Department of Justice, beginning January 1, 2011, and annually thereafter, to determine and impose a fee on manufacturers and importers of controlled substances classified in~~

~~Schedules II, III, and IV, as specified. The bill would require the State Board of Equalization to administer and collect the fee, as specified, and to deposit the fee in the CURES Fund established by the bill. The moneys in the CURES Fund would be available for expenditure, upon appropriation by the Legislature, only for reimbursement of the department for specified costs related to the CURES program. The bill would require that the fee imposed shall be consistent with all applicable legal requirements for imposing fees, as specified. The bill would make technical, nonsubstantive changes to specified provisions relating to the CURES program.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The CURES program is a valuable investigative, preventive,
4 and educational tool for law enforcement, regulatory boards,
5 educational researchers, and the health care community.
6 (b) Each year the CURES program responds to more than 60,000
7 requests from practitioners and pharmacists to (1) help identify
8 and deter drug abuse and diversion through accurate and rapid
9 tracking of Schedule II, III, and IV controlled substances, (2) help
10 practitioners make better prescribing decisions, and (3) cut down
11 on the misuse, abuse, and trafficking of prescription drugs in
12 California.
13 (c) The manufacture and importation of Schedules II, III, and
14 IV controlled substances have had deleterious effects on private
15 and public interests, including the misuse, abuse, and trafficking
16 in dangerous prescription medications resulting in injury and death.
17 ~~The fee tax that is imposed by this bill on manufacturers and~~
18 ~~importers of Schedules II, III, and IV controlled substances is to~~
19 ~~be limited in amount and seeks to mitigate these effects of the~~
20 ~~drugs by supporting the operation of the CURES program, which~~
21 ~~has proved a cost-effective tool to help to reduce the misuse, abuse,~~
22 ~~and trafficking of those drugs. There is a sufficient nexus between~~
23 ~~the fee this bill imposes on manufacturers and importers of~~
24 ~~Schedule II, III, and IV controlled substances and the deleterious~~

1 effects the bill would ameliorate through its funding of the CURES
2 program.

3 (d) It is the nature of these Schedule II, III, and IV controlled
4 substances that their addictive qualities and the ever present market
5 for their misuse and abuse pose inherent risks to public health that
6 must be systematically addressed, as by the CURES program.
7 Once these products are present in California, ad hoc enforcement
8 of conditions on distribution and criminal and civil sanctions on
9 downstream actors in the distribution system ~~is an~~ are
10 extraordinarily costly, ineffective, and inefficient means to attempt
11 to control the misuse, abuse, and trafficking of these substances.
12 It is therefore appropriate for manufacturers and importers, which
13 benefit from the commercial markets for these inherently dangerous
14 products with knowledge of their potential for misuse and abuse
15 absent systematic tracking and monitoring, to pay for the
16 cost-effective CURES program.

17 (e) ~~The Legislature declares that the imposition of a fee upon~~
18 ~~the manufacturers and importers of Schedule II, III and IV~~
19 ~~controlled substances by this act would not result in the imposition~~
20 ~~of a tax within the meaning of Article XIII of the California~~
21 ~~Constitution, because the amount and nature of the fee has a fair~~
22 ~~and reasonable relationship to the adverse impact and burden~~
23 ~~imposed by the manufacture and importation of Schedule II, III,~~
24 ~~and IV controlled substances.~~

25 SEC. 2. Section 11165 of the Health and Safety Code is
26 amended to read:

27 11165. (a) To assist law enforcement and regulatory agencies
28 in their efforts to control the diversion and resultant abuse of
29 Schedule II, Schedule III, and Schedule IV controlled substances,
30 and for statistical analysis, education, and research, the Department
31 of Justice shall, contingent upon the availability of adequate funds
32 from the CURES Fund and from the Contingent Fund of the
33 Medical Board of California, the Pharmacy Board Contingent
34 Fund, the State Dentistry Fund, the Board of Registered Nursing
35 Fund, and the Osteopathic Medical Board of California Contingent
36 Fund, maintain the Controlled Substance Utilization Review and
37 Evaluation System (CURES) for the electronic monitoring of the
38 prescribing and dispensing of Schedule II, Schedule III, and
39 Schedule IV controlled substances by all practitioners authorized
40 to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III and Schedule IV controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III and Schedule IV controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) The full name, address, and telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender and date of birth of the ultimate user.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

SEC. 3. Section 11165.05 is added to the Health and Safety Code, to read:

~~11165.05. (a) The Department of Justice shall, beginning January 1, 2011, and annually thereafter, impose a fee on manufacturers and importers of controlled substances classified in Schedule II, III, or IV in order to reimburse the department for costs related to the CURES program which provides for the electronic monitoring of the prescribing and dispensing of controlled substances classified in Schedule II, III, or IV.~~

~~(b) The department shall impose a fee on manufacturers and importers of controlled substances classified in Schedule II, III, or IV that the department determines to be sufficient for, and limited to, reimbursement of the department for the following expenses:~~

~~(1) The cost of the administration of the CURES program as required by this section and Sections 11165 and 11165.1.~~

~~(2) The cost of the maintenance of, and any improvements to, the CURES program.~~

~~(3) The cost of education and outreach relating to the CURES program.~~

~~(4) The cost of the investigation of abuses of the CURES program.~~

~~(e) The State Board of Equalization shall administer and collect the fee imposed by the department in compliance with the following:~~

~~(1) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section, including, but not limited to, regulations governing collections;~~

1 reports, refunds, and appeals relating to the fee imposed by this
2 section.

3 (2) The board may prescribe, adopt, and enforce emergency
4 regulations as necessary to implement the fee imposed by this
5 section.

6 (3) The imposed fee shall be due and payable from the
7 manufacturer or importer to the board on a quarterly basis, on or
8 before the last day of the second month following each calendar
9 quarter.

10 (4) Each manufacturer or importer of controlled substances
11 classified in Schedule II, III, or IV shall, on or before the last day
12 of the second month following each calendar quarter, pay the
13 imposed fee and file a return for the preceding quarterly period
14 with the board using electronic media, as prescribed by the board.
15 Returns shall be authenticated in a form or pursuant to methods
16 as may be prescribed by the board.

17 (5) The board may, to facilitate administration of the fee, require
18 that the payment of the fee and filing of the returns be made for
19 periods other than quarterly periods.

20 (d) The CURES Fund is hereby established in the State Treasury.
21 All fees imposed under this section, and any interest or penalties
22 imposed by the department or board with respect to those fees,
23 shall be paid to the board in the form of remittances payable to the
24 board. The board shall transmit any payment to the Treasurer for
25 deposit in the CURES Fund.

26 (e) Except for payments required to reimburse the board for its
27 administrative costs in collecting the fee imposed by this section,
28 all moneys deposited in the CURES Fund shall, upon appropriation
29 by the Legislature, be expended only for the purposes specified in
30 subdivision (b).

31 (f) Any fee imposed pursuant to this section shall be consistent
32 with all applicable legal requirements for imposing fees, including
33 the requirements set forth in *Sinclair Paint Co. v. State Bd. of*
34 *Equalization* (1997) 15 Cal.4th 866.

35 11165.05. (a) A person that manufactures controlled
36 substances classified in Schedule II, III, or IV in this state, or that
37 imports controlled substances classified in Schedule II, III, or IV
38 into this state, shall register with the Department of Justice to
39 enable the department to report to the State Board of Equalization
40 the persons subject to this section and to the tax imposed pursuant

1 to Part 33 (commencing with Section 70001) of Division 2 of the
2 Revenue and Taxation Code.

3 (b) A person shall not sell or distribute any controlled substance
4 classified in Schedule II, III, or IV in the state if the product is
5 received or purchased from a manufacturer or importer that is
6 not registered in accordance with the requirements of this section.

7 (c) A person required to register with the department shall file
8 an annual report with the department. The annual report shall be
9 due on or before January 1, 2011, and on or before January 1
10 each year thereafter, and shall provide the name, address, and
11 telephone number of the person required to register.

12 (d) A person required to register with the department shall also
13 file a quarterly report with the department. The quarterly report
14 shall be due on the last day of the month following each quarterly
15 period and shall provide all of the following information:

16 (1) The number of Schedule II, III, or IV pills the registrant has
17 sold in this state during that quarterly reporting period.

18 (2) The number of Schedule II, III, or IV pills the registrant has
19 imported into this state during that quarterly reporting period.

20 (3) The number of Schedule II, III, or IV pills the registrant has
21 sold, transferred, or otherwise furnished to other persons in this
22 state during that quarterly reporting period.

23 (4) Any other information the department deems necessary for
24 the purpose of administering this section.

25 (e) Each registrant that is required to provide the information
26 required by this section may be subject to audit by the department.

27 (f) On the last day of each month following the due date for
28 filing a quarterly report pursuant to subdivision (d), the department
29 shall send to the State Board of Equalization a report containing
30 all of the following information:

31 (1) The name, address, and telephone number of each person
32 required to register with the department pursuant to this section,
33 and the necessary information regarding who owes the tax imposed
34 pursuant to Part 33 (commencing with Section 70001) of Division
35 2 of the Revenue and Taxation Code on each Schedule II, III, or
36 IV pill sold in this state in the amount of \$0.0025 per pill for the
37 previous quarterly period.

38 (2) The number of Schedule II, III, or IV pills each registrant
39 manufactured in this state or imported into this state.

1 (g) *This section shall remain in effect until January 1, 2016,*
2 *and as of that date is repealed.*

3 SEC. 4. *Section 17054.8 is added to the Revenue and Taxation*
4 *Code, to read:*

5 17054.8. (a) *For each taxable year beginning on or after*
6 *January 1, 2011, and before January 1, 2016, there shall be*
7 *allowed to a taxpayer who is 55 years of age or older as a credit*
8 *against the “net tax,” as defined in Section 17039, an amount*
9 *equal to that amount paid or incurred by the taxpayer during the*
10 *taxable year for that taxpayer’s own medicine or drugs, as*
11 *described in Section 213(b) of the Internal Revenue Code, that*
12 *was not reimbursable or payable by public or private health*
13 *insurance plans or by any third party.*

14 (b) *The taxpayer shall claim the credit on a timely filed original*
15 *return.*

16 (c) *The Franchise Tax Board may prescribe rules, guidelines,*
17 *or procedures necessary or appropriate to carry out the purposes*
18 *of this section. Chapter 3.5 (commencing with Section 11340) of*
19 *Part 1 of Division 3 of Title 2 of the Government Code shall not*
20 *apply to any rule, guideline, or procedure prescribed by the*
21 *Franchise Tax Board pursuant to this section.*

22 (d) *In the case where the credit allowed by this section exceeds*
23 *the “net tax,” the excess may be carried over to reduce the “net*
24 *tax” for the following year, and the succeeding seven years, until*
25 *the credit is exhausted.*

26 (e) (1) *The total amount of credits that may be allowed pursuant*
27 *to this section shall not exceed the total amount of taxes collected*
28 *pursuant to Part 33 (commencing with Section 70001) of Division*
29 *2 for any taxable year.*

30 (2) *The intent of paragraph (1) is to ensure that the act adding*
31 *this section does not produce a net revenue gain in state taxes,*
32 *and the board and the Franchise Tax Board shall cooperate in*
33 *exchanging information for this purpose.*

34 (f) *This section shall remain in effect only until December 1,*
35 *2016, and as of that date is repealed.*

36 SEC. 5. *Part 33 (commencing with Section 70001) is added to*
37 *Division 2 of the Revenue and Taxation Code, to read:*

1 PART 33. CONTROLLED SUBSTANCES TAX LAW

2
3 70001. *This part shall be known and may be cited as the*
4 *Controlled Substances Tax Law.*

5 70002. *For purposes of this part:*

6 (a) *“CURES program” means the Controlled Substance*
7 *Utilization Review and Evaluation System program described in*
8 *Section 11165 of the Health and Safety Code.*

9 (b) *“Importer” means a person that imports controlled*
10 *substances classified in Schedule II, III, or IV into this state, for*
11 *sale or distribution in this state.*

12 (c) *“Manufacturer” means a person that manufactures*
13 *controlled substances classified in Schedule II, III, or IV sold in*
14 *this state, either directly or indirectly.*

15 (d) *“Quarterly report” means the report that a registrant is*
16 *required to file with the Department of Justice pursuant to Section*
17 *11165.05 of the Health and Safety Code.*

18 (e) *“Registrant” means a manufacturer or importer of controlled*
19 *substances classified in Schedule II, III, or IV that is required to*
20 *annually register and report certain information to the Department*
21 *of Justice pursuant to Section 11165.05 of the Health and Safety*
22 *Code.*

23 70003. *On and after January 1, 2011, a tax is hereby imposed*
24 *at the rate of \$0.0025 per pill included in Schedule II, III, or IV*
25 *upon every manufacturer and importer of controlled substances*
26 *classified as Schedule II, III, or IV, or other person that makes the*
27 *first sale in this state of a Schedule II, III, or IV controlled*
28 *substance. The tax imposed by this part is for the purpose of*
29 *reimbursing the Department of Justice for the cost of administering*
30 *the CURES program, which provides for the electronic monitoring*
31 *of the prescribing and dispensing of controlled substances*
32 *classified in Schedule II, III, or IV.*

33 70004. *The board shall administer and collect the tax imposed*
34 *by this part pursuant to the Fee Collection Procedures Law (Part*
35 *30 (commencing with Section 55001)). For purposes of this part,*
36 *the references in the Fee Collection Procedures Law to “fee” shall*
37 *include the tax imposed by this part and references to “feepayer”*
38 *shall include a person required to pay the tax imposed by this part.*

39 70005. *Each person required to pay the tax shall prepare and*
40 *file with the board a return in the form prescribed by the board*

1 containing information as the board deems necessary or
2 appropriate for the proper administration of this part. The return
3 shall be filed on or before the last day of the calendar month
4 following the calendar quarter to which it relates, together with
5 a remittance payable to the board for the amount of tax due for
6 that period.

7 70006. The board may prescribe those forms and reporting
8 requirements as are necessary to implement the tax, including, but
9 not limited to, information regarding the total amount of tax due.

10 70007. (a) (1) The CURES Fund is hereby created in the State
11 Treasury. The CURES Fund shall consist of all taxes, interest,
12 penalties, and other amounts collected pursuant to this part, less
13 refunds and reimbursement to the board for expenses incurred in
14 the administration and collection of the tax.

15 (2) Money in the CURES Fund shall, upon appropriation by
16 the Legislature, be used to reimburse the Franchise Tax Board for
17 administrative costs related to Section 17054.8.

18 (b) All moneys in the CURES Fund less refunds and
19 reimbursement pursuant to subdivision (a), shall, upon
20 appropriation by the Legislature, be allocated to the Department
21 of Justice for the following:

22 (1) The cost of the administration of the CURES program as
23 required by this section and Section 11165.05 of the Health and
24 Safety Code.

25 (2) The cost of the maintenance of, and any improvements to,
26 the CURES program.

27 (3) The cost of education and outreach relating to the CURES
28 program.

29 (4) The cost of the investigation of abuses of the CURES
30 program.

31 70008. This part shall remain in effect only until January 1,
32 2016, and as of that date is repealed.

33 SEC. 6. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

O